

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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HUGH D. SMITH,

Plaintiff,

v.

23-CV-1045-JLS  
ORDER

ERIE COUNTY SHERIFF'S  
DEPARTMENT, et al.,

Defendants.

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*Pro se* Plaintiff, Hugh D. Smith, is an inmate at the Erie County Correctional Facility ("ECCF")<sup>1</sup> and seeks to proceed *in forma pauperis* on his allegations brought pursuant to 42 U.S.C. § 1983. *See* Dkt. 8. On October 27, 2023, the Court administratively closed Smith's case because his *in forma pauperis* application did not meet the requirements of 28 U.S.C. § 1915. *See* Dkt. 5.

The Court informed Smith that the application must contain a completed and signed prison certification in which the requisite prison official sets forth

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<sup>1</sup> Smith was an inmate at the Cattaraugus County Jail when he filed this action, Dkt. 1. His complaint, *id.* at 25, and motion for appointment of counsel, Dkt. 11, stated that he would be released on December 7, 2023. Smith also provided a personal address where he would be residing upon his release. The Court recently checked the Erie County Sheriff Department's website, which indicates that Plaintiff currently is incarcerated at ECCF.  
<<https://www2.erie.gov/sheriff/sites/www2.erie.gov/sheriff/files/uploads/data/InmateList.pdf>>

Plaintiff must provide the Court with a current address at all times, or his case may be dismissed with prejudice. *See* Loc. R. Civ. P. 5.2(d).

information concerning Smith's inmate trust fund account statement as mandated under 28 U.S.C. § 1915(a)(2) and a completed and signed authorization form permitting prison officials to remove funds from Smith's inmate trust fund account as mandated under 28 U.S.C. § 1915(b)(2). *See* Dkt. 5.

The Court gave Smith 30 days to submit either (1) a properly supported motion to proceed *in forma pauperis* along with the required certification of Plaintiff's inmate trust fund account statement (or institutional equivalent) and signed authorization form or (2) the \$350.00 filing fee and the \$52.00 administrative fee (\$402.00 total). *Id.* Smith responded to the Court's Order by submitting a new motion to proceed *in forma pauperis* with a completed and signed prison certification section<sup>2</sup> but he failed to submit a signed authorization. *See* Dkt. 8. Therefore, Smith's renewed *in forma pauperis* application is denied.

Smith was informed of the minimum steps that must be taken to submit a proper *in forma pauperis* application but has not complied with the Court's prior Order. As a matter of discretion, the Court will provide Smith with one final opportunity to fix this error and he may have until **February 10, 2024** to either (1) submit a signed authorization or (2) pay the filing and administrative fees totaling \$405.00.<sup>3</sup> If Smith does not submit a signed authorization or pay \$405.00 by

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<sup>2</sup> The prison certification was signed by an Erie County Sheriff's Department official. Dkt. 8, at 2.

<sup>3</sup> Effective May 1, 2013, the Judicial Conference of the United States added an administrative fee to the cost of filing a civil lawsuit in district court. *See* September 2012 Report of the Proceedings of the Judicial Conference of the United States, available at <http://www.uscourts.gov/about-federal-courts/reports-proceedings-judicial-conference-us>. But this additional administrative fee does not

February 10, 2024, this case will be dismissed without prejudice. *See Leonard v. Lacy*, 88 F.3d 181, 187–88 (2d Cir. 1996).

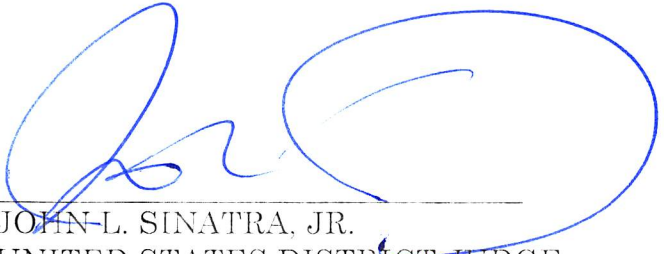
### CONCLUSION

For the reasons set forth above, Plaintiff's renewed application for leave to proceed *in forma pauperis*, Dkt. 8, is denied without prejudice, and the Clerk of Court shall administratively terminate this action without filing the Complaint or assessing a filing fee. Smith has until **February 10, 2024**, to either (1) submit a signed authorization or (2) pay the filing and administrative fees totaling \$405.00. If Smith fails to comply with this deadline, this case will be dismissed without prejudice. To assist Smith, the Clerk of Court shall send to Smith a blank authorization form. Upon the submission of the signed authorization or \$405.00, the Clerk of Court shall reopen this case without further order.

Smith's Motion for appointment of counsel, Dkt. 11, is denied without prejudice to refile upon the reopening of this action.

**SO ORDERED.**

Dated: January 8, 2023  
Buffalo, New York



JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE

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apply to prisoners who are granted permission to proceed *in forma pauperis*. *See generally id.* Effective December 1, 2023, this fee was increased to \$55.00. *See* <https://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule>.